

## UNCONTESTED DIRECT EVIDENCE OF CORRUPTION AND OTHER CRIMINAL CONDUCT BY DEFENDANTS

### CORRUPTION OF JUDICIAL PROCEEDINGS AFFECTING PLAINTIFFS

○ Anna Tuleyeva ("Tuleyeva") in 1998. Informant Mikhail Zhuravlo ("M. Zhuravlo") that M. Zhuravlo gives not pay him bribes, control over NKAZ would be transferred to Sibirsky (First M. Zhuravlo Dec. ¶¶ 35-37).

○ Alexander Makharadze ("Makharadze") in 1999. Makharadze tells Khachaturov that the "enterprise" (i.e. Mikhail Chemol, Oleg Dempaska, Makharadze, and Anton Malyevsky) date not to take over NKAZ through bribes to Tuleyeva for his assistance in a strong bankruptcy in Kemerovo (First Khachaturov Dec. ¶¶ 8-9).

○ Makharadze in 1999. Makharadze tells Jolot Khachaturov ("Khachaturov") that the "enterprise" (i.e. Chemol, Dempaska, Makharadze, and Malyevsky) paid \$5 million in bribes to Tuleyeva through different entities of the "enterprise" (First Khachaturov Dec. ¶¶ 11-16).

○ Anatoly Chubais ("Chubais"), the head of the company which supplies electrical power in Russia, in 1999. Jolot M. Zhuravlo that he was responsible for Tuleyeva's appointment as regional governor and that if M. Zhuravlo and MIKOM did not cooperate with Mikhail Chemol ("Chemol") and Oleg Dempaska ("Dempaska"), Chubais would help Tuleyeva transfer control of NKAZ to Sibirsky (First M. Zhuravlo Dec. ¶¶ 41-46).

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- o Judge Matvienko told Igor Rekhtovsky ("Rekhtovsky") that "ours" (meaning Chernyshev and his backers) would not allow the bankruptcy to effect production of the plan. Judge Matvienko then pointed to a stack of NKAZ petitions for relief on his desk, despite the fact that he had not been assigned to the bankruptcy and said that no petitions would be heard unless and until he himself authorized them (Rekhtovsky Dec. ¶¶ 75-76).
- o At a meeting with Rekhtovsky in January 2000, Judge Matvienko, the Chairman of Kemerovo Arbitrazh Court, summoned Judge Moskvina, who was presiding over the NKAZ bankruptcy, in order to demonstrate to Rekhtovsky that he controlled Judge Moskvina (Rekhtovsky Dec. ¶¶ 73-78).
- o Chennor and Maklunuchov, January 2000. Numerous admissions that they organized the takeover of GOK (Hearings Dec. ¶ 11).
- o Maklunuchov in Fall 2000. "We control the legal system in Russia. And if you don't understand this by now, you are stupid. In all the legal proceedings that have taken place so far, we have had nothing - no basis for our claims. But we still won. So, you want to fight? You will lose money, and if you make me really angry you will lose your freedom."

## UNCONTESTED DIRECT EVIDENCE OF CORRUPTION AND OTHER CRIMINAL CONDUCT BY DEFENDANTS

### CORRUPTION OF OTHER JUDICIAL PROCEEDINGS IN KEMEREVO BY DEFENDANTS AND THEIR ALLIES

Tulayev, through his deputy, instructed Sergey Kuznetsov ("Kuznetsov"), who supervised the work of bankruptcy managers in Kemerevo under Tulayev, to issue a false report that an external manager was harassing creditors of a company, and to convince the creditors to petition the Kemerevo Arbitrazh Court for the manager's removal. Kuznetsov and that and the court, per Judges Kondrashev and Segodina, removed the external manager on August 14, 1998. (Kuznetsov Dec. ¶¶ 8-16).

Tulayev in March 1998, "as governor elected by all the people, all state institutions in the Kemerevo region, in particular the judges of the Arbitrazh Court, had to obey him." (Kuznetsov Dec. ¶ 20).

Tulayev instructed the Kemerevo Arbitrazh Court to appoint Kuznetsov as Provisional Manager of Kuznetsky Metallurgical Kombinat ("KMK") on July 15, 1998, in order to gain control of that plant. After Kuznetsov refused to do Tulayev's bidding, Kuznetsov was forcibly removed as KMK's manager in a military raid on the plant. (Kuznetsov Dec. ¶¶ 17-35).



## UNCONTESTED DIRECT EVIDENCE OF CORRUPTION AND OTHER CRIMINAL CONDUCT BY DEFENDANTS

### CORRUPTION OF OTHER JUDICIAL PROCEEDINGS IN KEMEROVO BY DEFENDANTS AND THEIR ALLIES

Tulevov corrupted the bankruptcy proceeding of Kurbass because it supplied power to many industries in the region and could be used to force other companies into bankruptcy. (Grishkovets Dec. 41-41-55)

On Tulevov's orders and directions at least four separate bankruptcies in Kemerovo were corrupted by obtaining the appointment of bankruptcy managers who were in fact working for Tulevov. (Grishkovets Dec. 41-41-55)

Grishkovets conducted ex parte meetings with Judge Segodina of the Kemerovo Arbitration Court, the same judge who decided the merits of the NIKAZ case, in order to obtain her agreement to assist Tulevov in manipulating and fixing bankruptcy proceedings. (Grishkovets Dec. 41-22-34, 41-41-50-53)

# UNCONTESTED DIRECT EVIDENCE OF CORRUPTION AND OTHER CRIMINAL CONDUCT BY DEFENDANTS

## CORRUPTION OF THE CRIMINAL JUSTICE SYSTEM AFFECTING PLAINTIFFS

- o In 2000, Khrudarov is arrested when drugs are planted on him in Moscow. Khrudarov is forced to flee Russia for fear of his life (First Khrudarov Dec. ¶¶ 30-32).
- o In 2000, false criminal charges are brought against Mikhail Zhivilo. He is forced to flee Russia for fear of his life having already survived one assassination attempt (First Zhivilo Dec. ¶¶ 48-53; Second Y. Zhivilo Dec. ¶¶ 14).
- o In 2000, false criminal charges are brought against Yuri Zhivilo. He is forced to flee Russia for fear of his life (Second Y. Zhivilo Dec. ¶ 10).
- o In April of 2001, Russian organized crime police invade Joseph Abram's ("Abram") Moscow office and plant heroin. As this is happening, defendant Mikhail Zhivilo telephones Abram and says, "Are you convinced? Now you can face 18 years in jail or you can go to the airport and leave Russia." Abram was never charged in this incident and fled Russia for fear of his life (Abram Dec. ¶¶ 27-28).

## UNCONTESTED DIRECT EVIDENCE OF CORRUPTION AND OTHER CRIMINAL CONDUCT BY DEFENDANTS

### EXTORTION

- o Chernom in the fall of 1995. Stuntions Mikhail Zhivvilo to Israel and tells him that he has to cooperate otherwise Anton Malevsky ("Malevsky") and his friend Yaponchik would need to "become involved in the business" (Second M. Zhivvilo Dec. ¶¶ 13-16).
- o Dempaska in 1995. At an aluminum conference in Chicago Dempaska threatens Yuri Zhivvilo that "bad things would happen" to him and his brother like they happened to Felix Evoy unless they ensured that NIK AZ and BVMF Ltd. shared the proceeds from the production and sale of NIK AZ aluminum with the Chernom group (Second Y. Zhivvilo Dec. ¶¶ 4-5).
- o In March 1996 an attempt on the life of Mikhail Zhivvilo took place. After that Chernom told Mikhail Zhivvilo that if it did not happen the first time it would happen the second time (Second M. Zhivvilo Dec. ¶¶ 19-20).
- o In 1998 in France Chernom threatened Mikhail Zhivvilo that his partner Anton (meaning Malevsky) would get involved if Mikhail Zhivvilo did not cooperate with them (Second Y. Zhivvilo Dec. ¶¶ 21-23).
- o Numerous payments were made to accounts designated by Chernom as a result of his various threats to Mikhail and Yuri Zhivvilo (First Y. Zhivvilo Dec. ¶¶ 10).



## UNCONTESTED DIRECT EVIDENCE OF CORRUPTION AND OTHER CRIMINAL CONDUCT BY DEFENDANTS

### EXTORTION

- Cheremov in April 1999. At a meeting at Cheremov's apartment in Paris, Chernobyls Kluchnikov tells him he does not arrange for the interest in GOKs to be transferred (First Kluchnikov Dec. ¶ 21).
- Mallevsky and Maklunin in November 1999. At the Luxor Restaurant in the Metropole Hotel in Moscow, Mallevsky and Maklunin threaten Kluchnikov's life for not transferring interests in GOKs (First Kluchnikov Dec. ¶ 26).
- Mallevsky in 2000. At the Balting Kempinsky Hotel in Moscow, similar threats are made by Mallevsky to Kluchnikov (First Kluchnikov Dec. ¶ 27).
- Maklunin in March 2001. Tells Brian "Joseph do you think you are an American hero? I am giving you an ultimatum. You get \$30 million now and you sign that you have no complaints. You can leave and enjoy the Calabean Or... you will not sleep quietly for even one night." Later, Maklunin told Brian that he would have to eliminate him. As a result, Brian fled Russia (Brian Dec. ¶¶ 27-31).

## SERGEI ZANKOVSKY: THEORY AND PRACTICE OF BANKRUPTCY

\* \* \*

### Theory

The initial purpose of the Law "On Insolvency (Bankruptcy)" was to provide equal protection of proprietary rights of the debtor and its creditors within the bankruptcy proceedings.

\* \* \*

### Practice

However, the practice of application of the Bankruptcy Law reveals a completely different picture.

It would be very strange if the dark minds did not think of a way to use bankruptcy in companies' takeovers.

The initiation of the bankruptcy proceedings turned out to be an extremely easy task: any company is under a threat of bankruptcy if it is not able to pay off its debts of at least 500 minimal wages within three months. There are several ways to bring a company to the condition when it is not able to pay off its debts within three months. One of them, the most "reliable", is through a "penetration" into its executive bodies. This happened, for example, with one large ore mining and processing plant. Immediately after it came to power, its new management took large bank loans with the repayment term of ten to fifteen days. Clearly, the issue of repayment was not even considered thus very efficiently resolving the problem of the initiation of a bankruptcy. The above is just an initial phase, a preliminary stage in gaining control over the company. The main events develop later, in the course of the bankruptcy proceedings, when a creditors' meeting and an arbitrazh manager come into play. The final result of these proceedings depends solely on their interaction.



### Goals and Tasks

By definition, the goal of any creditor is get their money back.

However, things go completely different when the only goal of the creditors is to create prerequisites for gaining control over the company. In such a case it is in their interests to file a petition with the court seeking to remove any arbitrazh manager who intends to act in compliance with the law on bankruptcy. They are interested in quickly declaring the debtor bankrupt and, therefore, actively resist the possibility of a settlement with the debtor.

\* \* \*

### **The All-Powerful Manager**

As to the arbitrazh manager, his main goal is to act within the framework established by the law on bankruptcy, taking into account the interests of the debtor as well as its creditors. The first obstacle to that are poorly qualified managers.

Negative tendencies become clear when the manager attempts to orchestrate the company's takeover, especially since the law on bankruptcy grants him a wide range of powers. As early as at the supervision stage, an (arbitrazh) manager can demand the removal of the debtor's manager and then assume his responsibilities. Furthermore, a manager is able to force an introduction of the competitive proceedings, the final stage in a bankruptcy, which usually ends in liquidation of the debtor.

In his interactions with the creditors, the sham manager's goal is to create such a composition of creditors that would only make decisions necessary for the retention of control over the company. One of the manager's functions, i.e. determining the pool of debtor's creditors and the total amount of their claims, serves as an instrument in achieving that goal. In violation of the law, the manager can use this function to refuse to include the claims filed by the "inconvenient" creditors in the register of creditors' claims. Since for a certain period of time the manager runs the company and can independently dispose of its property, he is also able to create false debts to engage "useful" in his opinion persons as creditors.

**DEFENDANTS'  
POST-ARGUMENT  
SUBMISSIONS  
2-20-03**



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February 20, 2003

### BY HAND

Honorable John G. Koeltl  
United States District Judge  
Southern District of New York  
500 Pearl Street, Room 1030  
New York New York 10007

Re: Base Metal Trading SA, et al. v. Russian Aluminum, et al.  
00 Civ. 9627 (JGK)

Dear Judge Koeltl:

As Your Honor's directed at the recent oral argument, we are enclosing two copies of charts of the GOK and NKAZ contracts as well as the declarations of Prof. Boris Igo Petrov and Paul Stephan both dated February 19, 2003 (with exhibits providing the Court with the relevant Russian statutes), describing remedies available to the plaintiffs in Russia. In that regard, in addition to the consents to jurisdiction already provided by the defendants, the defendants will, if Your Honor deems it appropriate, consent to venue in Moscow -- thus avoiding any allegation of advantage which might otherwise pertain in Kemerovo and Kachkanar.

Also submitted herewith are letters from [redacted], counsel for NKAZ, and [redacted], counsel for GOK. These letters address plaintiffs' chart of Russian court decisions which was served on defendants on the morning of the oral argument.

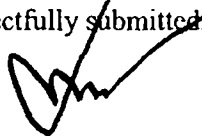
Finally, we are enclosing two copies of defendants' CD ROM which has been updated to include the charts (chronologies) of Russian Court decisions which were submitted on

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Honorable John G. Koeltl  
February 20, 2003  
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February 7th and referred to during defendants' oral argument. These CD ROMs supercede and should be substituted for the earlier versions sent to Your Honor.

Respectfully submitted,



Michael D. Burrows  
On behalf of all defendants

MDB:dkm

cc: James Bernard, Esq. - Stroock Stroock & Lavan LLP (by hand)  
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February 20, 2003

By Hand

Hon. John G. Koeltl  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

Base Metal Trading, S.A., et al. v. Russian Aluminum et al.  
Docket No. 00 Civ. 9627 (JGK)

Dear Judge Koeltl:

On the morning of February 10, 2003, shortly before oral argument on the defendants' motions to dismiss, plaintiffs provided the Court and counsel with a notebook containing charts and other materials relating to the pending motions. Counsel for NKAZ did not have an opportunity to review plaintiffs' notebook before oral argument, and thus could not respond at that time. Since then, we have reviewed plaintiffs' notebook carefully, and found that the portions relating to the NKAZ bankruptcy contain a number of errors and other objectionable matters that we believe are important to call to the Court's attention.

1. Plaintiffs have included in their charts new allegations, which are not supported by anything in the record and are made for the first time in these charts. See, e.g., charts of NKAZ bankruptcy litigation (~~Plaintiffs' Charts re NKAZ Bankruptcy~~) (stating that "Plaintiffs have recently become aware" of new allegations of supposed corruption). We respectfully urge the Court to disregard these allegations.

2. The legal discussion in the footnotes to plaintiffs' charts contains several errors and mischaracterizations. For example, in footnote 2, plaintiffs claim that they could not have relied on the March 12, 2001 decision of the Russian Constitutional Court, which held unconstitutional the Bankruptcy's Law's

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restrictions on appeals of interlocutory orders in bankruptcy proceedings, because that ruling did not have retroactive effect. ~~(Plaintiffs' Charter NKAZ at 30 n.2)~~ This contention is wrong, and plaintiffs' effort to find support for their argument in the article by Judge V. Anishina, which defendants submitted as Exhibit 2 to the Declaration of Sergey Komolov, is based on a mischaracterization of what Judge Anishina said.

Plaintiffs quote Judge Anishina as saying that decisions of the Constitutional Court "have no retroactive force," and that therefore "a citizen [who] did not apply to the Constitutional Court and after [a ruling that a law was unconstitutional] seeks for review of a case" would not have the right to seek review based on that decision. ~~(Plaintiffs' Charter NKAZ at 30 n.2)~~ However, plaintiffs have taken this statement out of context. The quoted portion of Judge Anishina's article makes clear that this comment only applies to situations where someone was trying to reopen decisions "that have long entered into legal force and have been enforced" ~~(id.)~~ – in other words, e.g., to efforts to seek to reopen a money judgment that has long since become final and has been collected. In contrast, Judge Anishina makes clear in the very next sentence of her article that the Constitutional Court ruling would be applicable to court decisions or orders that had not yet become final (or "entered into legal force"), as well as to court judgments that were final but had not yet been enforced. As Judge Anishina explains:

The decisions that have not entered into force and the decisions that have entered into force but have not been enforced . . . are to be reviewed upon application of interested persons. The decisions that have not entered into force are to be reviewed by way of cassation (appeal), the decisions that have entered into force, by way of review . . . o[n] the basis of newly revealed circumstances or pursuant to supervisory procedure [i.e., petition to the Supreme Arbitrazh Court], depending on the body to which the citizen made a filing.

~~(Komolov Decl. Ex. 2 at 9).~~

Here, the relevant decisions of the bankruptcy court had clearly not been "enforced" at the time of the Constitutional Court ruling. The Constitutional Court's ruling was issued on March 12, 2001, at a time when the bankruptcy proceedings were still open and there was no final determination of the bankruptcy. The bankruptcy proceedings were not officially terminated in the Arbitrazh Court until that Court approved the amicable settlement agreement on April 3, 2001, and that decision was subject to an appeal, which was not decided until September 6, 2001. Thus, before April 3, 2001, plaintiffs could have applied for leave to appeal the Arbitrazh Court's interlocutory rulings, and sought to delay approval of the